SURETYSHIP—ALTERATION OF INSTRUMENTS—BLANKS FILLED BY PRINCIPAL DEBTOR BEFORE DELIVERY TO CREDITOR.—The defendants became sureties on a contract, guaranteeing among other things the payment of an existing indebtedness, the amount being in blank when they signed. When the instrument was offered in court the blank had been filled, but without the knowledge of the defendants. *Held,* that the filling of the blank was an unauthorized alteration which discharged the sureties. *J. R. Watkins Medical Co. v. Miller et al.* (1918, S. D.) 168 N. W. 373.

Where a surety signs an incomplete document and hands it to the principal, authorizing him to fill blanks in some specified manner and to deliver the completed document to the creditor, he should always be bound by the instrument as finally delivered, when it is in the hands of an innocent holder for value. This should be so even in the case of a sealed instrument, for it does not become the surety's deed until delivery by the principal debtor to the obligee or his representative. Nor is the principal such a representative. Such is the rule in the case of negotiable instruments. N. I. L. sec. 14; *Ward v. Hackett* (1883) 30 Minn. 150; see also (1918) 27 YALE LAW JOURNAL, 951, (1917) *ibid.* 242, and CURRENT DECISIONS, *infra.* There is a strong conflict in the case of sealed instruments, but the better rule is that the surety is bound by estoppel. *Butler v. United States* (1874, U. S.) 21 Wall. 272. Authority to deliver a sealed instrument may be by parol, and the instrument *as delivered* is the signer's deed. *White v. Duggan* (1885) 140 Mass. 18 ("A specialty deriving its validity from an estoppel *in pais* is perhaps somewhat like Nebuchadnezzar's image with a head of gold supported by feet of clay." Holmes, J.). Some states, however, hold that the instrument is not the deed of the surety even when the blanks were filled out exactly as he directed. *State v. Boring* (1846) 15 Ohio, 507. Such a doctrine is a worship of a misconception of mere ancient form, when in fact the form was other than the one that is being worshipped. At the very most, these cases do not support the principal case, where the contract does not appear to have been a specialty. In cases like this the surety has ready means of protecting himself by refusing to sign until after blanks are all filled. The obligee has no such means of detecting unauthorized filling of blanks left by the surety. The court was quite correct in holding that the filling of the blank was a material alteration. If such an alteration had been made by the obligee or his agent, it would discharge the surety. Occasionally the principal debtor may properly be held, in this regard, the agent of the obligee, rather than of the surety. *Koch Medical Tea Co. v. Poitras* (1916, N. D.) 161 N. W. 727. But there seems to be little ground for assuming such a state of facts in the present case; and the surety has been held bound even where the principal was said to be the agent of both parties. *Palacios v. Brasher* (1893) 18 Colo. 593, 34 Pac. 251.

SURETYSHIP—NONDISCLOSURE BY CREDITOR OF EXISTING DEFAULT BY PRINCIPAL.—The defendant signed the bond of a paving contractor in ignorance of the fact that the latter was already in default on the contract the performance of which was being guaranteed by the defendant. Such breach of contract was well known to the creditor, the obligee in the surety bond. By the terms of the bond the defendant bound himself to answer only for future defaults. *Held,* that the surety bond was not operative to bind the surety. *Park Paving Co. v. Kraft* (1918, Pa.) 105 Atl. 39.

There is no fiduciary relation between a creditor and one who is asked to be a surety. There is no *duty* to disclose all material facts that may affect the surety's willingness to sign. Nor—outside of marine insurance—is a dis-

closure of all material facts a condition precedent to the existence of a duty in the surety to pay as he has agreed. *North British Ins. Co. v. Lloyd* (1854) 10 Exch. 523; *Atlas Bank v. Brownell* (1869) 9 R. I. 168 (creditor did not disclose that the principal had been gambling); *Magee v. Manhattan Co.* (1875) 92 U. S. 93 (insolvency of principal); *Farmers' Bank v. Braden* (1891) 145 Pa. 473 (insolvency of principal); *Hamilton v. Watson* (1845, H. of L.) 12 Cl. & F. 109 (principal already largely indebted to the creditor); *Bostwick v. VanVoorhis* (1883) 91 N. Y. 353 (principal had been irregular in some way not affecting his moral character or honesty). On the other hand, the surety is not bound in case the creditor fails to disclose the fact that the principal was an embezzler or had been otherwise dishonest in his relations with the creditor. *Sooy ads. State of New Jersey* (1877, Sup. Ct.) 39 N. J. L. 135; *Railton v. Mathews* (1844, H. of L.) 10 Cl. & F. 934. Had the bond in the present case been so worded as to bind the surety to answer for past defaults as well as future ones, the disclosure of the existence of the past default would be a condition precedent. *Pidcock v. Bishop* (1825) 3 L. J. K. B. 109, 3 B. & C. 605. At least, such non-disclosure would be evidence of fraud. *Lee v. Jones* (1864) 17 C. B. N. S. 482. In view of the authorities the present decision seems to be too favorable to the surety.

TRUSTS—RESULTING TRUSTS—DEVISE ON TRUST NOT PROPERLY DECLARED.—A testator bequeathed all his personal property to his executor "in trust for the purposes of paying out and disposing of the same as I have advised and directed him to do." Prior to the execution of the will the legatee promised the testator to carry out the directions, which were communicated to him at that time. *Held,* that beneficiaries orally named by the testator to the legatee were not entitled to have the directions carried out, but that there was a resulting trust for the next of kin. *Reynolds v. Reynolds* (1918, N. Y.) 121 N. E. 61.

It has long been held in New York, in accordance with the great weight of authority in other jurisdictions, that if a gift in a will is in form absolute but in fact upon an oral "secret" trust communicated to the devisee or legatee, who has agreed to carry it out, there is a so-called "constructive trust" for the intended beneficiaries. *Matter of O'Hara* (1884) 95 N. Y. 403. This is also the English law. *Boyes v. Carritt* (1884) 26 Ch. D. 531. A recent Washington case is *contra*. *Brown v. Kausche* (1917, Wash.) 167 Pac. 1075, commented upon in (1918) 27 YALE LAW JOURNAL, 389. Where, as in the principal case, the will indicates that the property is to be held in trust, but fails to reveal the terms of the same, there is greater conflict of authority. The English authorities do not distinguish such a case from that in which the gift on the face of the will is absolute. *In re Fleetwood* (1880) 15 Ch. D. 594. Some American cases take the same view. *Curdy v. Berton* (1889) 79 Cal. 420, 21 Pac. 858; *Cagney v. O'Brien* (1876) 83 Ill. 72. There are, however, authorities to the contrary. *Olliffe v. Wells* (1881) 130 Mass. 90; *Sims v. Sims* (1897) 94 Va. 580, 27 S. E. 436. In the principal case the court attempts to distinguish the absolute devise from that before the court on the ground that in the former there is nothing in the will to show that the devisee or legatee is not to have the property, whereas in the latter the words "in trust" reveal a contrary intention. On the basis of this difference it is argued that in the latter case, the words of the will reveal a resulting trust for the next of kin; that it would therefore be a "fraud" upon them to allow the beneficiaries named in the oral communications to take, and would result in a clear violation of the statute of wills. With the latter contention we may agree; but for the reasons given in the comment in (1918) 27 YALE LAW JOURNAL, 389, it is believed that the same